

1. This action arises out of Defendant's violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA") by negligently, knowingly, and/or willfully placing automated calls to Plaintiff's cellular phone without consent, thereby violating the TCPA.

2. Plaintiff alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

3. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367 and this Court has original jurisdiction over Plaintiff's TCPA claims. *Mims v. Arrow Fin. Serv., LLC*, 132 S.Ct. 740 (2012).

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) & (c), because Plaintiff resides within the District of Nevada, a substantial portion of the events or omissions giving rise to the claim occurred in this District, and Defendant regularly conducts business in this District.

PARTIES

5. The Plaintiff, DEWANN WILLIAMS ("Plaintiff" or "Mr. Williams"), is an adult individual residing in Las Vegas, Nevada.

6. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).

7. Defendant SANTANDER CONSUMER USA INC. ("SANTANDER"), is doing business in the State of Nevada.

8. Defendant is and at all times mentioned herein was, a corporation and is a "person," as defined by 47 U.S.C. § 153 (39).

9. SANTANDER at all times acted by and through one or more of its

agents or representatives.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

10. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.

11. The TCPA regulates, among other things, the use of automated telephone dialing systems.

12. 47 U.S.C. § 227(a)(1) defines an automatic telephone dialing system (“ATDS”) as equipment having the capacity –

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

13. Specifically, 47 U.S.C. § 227(1)(A)(iii) prohibits any call using an ATDS or an artificial or prerecorded voice to a cellular phone without prior express consent by the person being called, unless the call is for emergency purposes.

14. According to findings by the Federal Communications Commission (“FCC”), such calls are prohibited because automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls. The FCC also recognized that wireless customers are charged for incoming calls.¹

¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

15. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and prerecorded calls to a wireless number by a creditor, or on behalf of a creditor, are permitted only if the calls are made with the “prior express consent” of the called party.²

16. On July 10, 2015, the FCC issued FCC Order 15-72, wherein the FCC³ stated that “[a] caller may not limit the manner in which revocation [of prior express consent to call] may occur” and that the “burden is on the caller to prove it obtained the necessary prior express consent”. *Id.* at ¶ 30.

17. Further, consumers (like the Plaintiff) may revoke consent through any reasonable means. *Id.* at ¶ 47.

18. Nothing in the language of the TCPA or its legislative history supports the notion that Congress intended to override a consumer’s common law right to revoke consent. *Id.* at ¶ 58.

19. Indeed, some consumers may find unwanted intrusions by phone more offensive than home mailings because they can cost them money and because, for many, their phone is with them at almost all times. *Id.* at ¶ 61.

² *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, 23 FCC Rcd 559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

³ See Declaratory Ruling and Order, Adopted June 18, 2015 and Released July 10, 2015 regarding *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135 (https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1.pdf).

20. Consumers have a right to revoke consent, using any reasonable method including orally or in writing. *Id.* at ¶ 64.

21. In this matter, this may all be moot, since “consent” was to place calls to the Plaintiff within the last four years to his cellular telephone was simply never provided to the Defendant.

ALLEGATIONS APPLICABLE TO ALL COUNTS

22. Within the four years prior to filing the instant complaint, the Plaintiff received numerous collection calls from the Defendant for a car loan, which he was not an obligor under

23. Santander placed these collection calls from the following phone numbers: (888) 222-4227 and (877) 898-8468.

24. Plaintiff at all times herein did not have a prior business relationship with Santander.

25. Plaintiff never provided Santander prior express consent (PEC) to place calls to his cell phone at any time; and to the extend Santander obtained Plaintiff’s PEC the Plaintiff revoked such consent on numerous occasions after January 24, 2014.

26. Upon information and belief, Defendant employs an automatic telephone dialing system (“ATDS”) which meets the definition set forth in 47 U.S.C. § 227(a)(1).

27. Defendant or its agent/s contacted Plaintiff on Plaintiff's cellular telephone number ending in "9327" via an ATDS as defined by 47 U.S.C. § 227(a)(1), as prohibited by 47 U.S.C. § 227(b)(1)(A).

28. Moreover, many of the calls were made using a pre-recorded voice.

29. In the calls that Plaintiff did answer, there would be a short pause lasting about two to three seconds between the time the calls were answered and the time that a live agent introduced themselves as a representative from Defendant.

30. On other occasions the Plaintiff would hear a pre-recorded voice recording when he answered Santander's calls seeking to collect a debt from him (a debt he did not owe).

31. Upon information and belief, based on the pause and lack of prompt human response during the phone calls in which Plaintiff answered, Defendant used a predictive dialing system to place calls to Plaintiff.

32. "A predictive dialer is equipment that dials numbers and, when certain computer software is attached, also assists [caller] in predicting when an [agent] will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers." *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d 1036, 1043 (9th Cir. 2012).

33. The Federal Communications Commission (“FCC”) has determined that predictive dialing systems are a form of an automatic telephone dialing system. *Id.*

34. Upon information and belief, the predictive dialing system employed by Defendant transfers the call to a live agent once a human voice is detected, thus resulting in a pause after the called party speaks into the phone.

35. On or about January 24, 2014, the Plaintiff informed Santander that its calls were a nuisance and that it was calling his cell phone to collect a debt he did not owe (the “C&D Call”).

36. Plaintiff advised Santander’s representative during this (and other calls thereafter) to “stop calling” him at any number. Plaintiff went to advise Santander to cease calls his cell phone numbers ending “2548”, “9300” and landline ending 9327 thereby revoking consent, if any ever existed (which it didn’t), to be contacted by Defendant via an ATDS.

37. However, Santander’s calls persisted to the above numbers even after Santander was instructed during the C&D Call. Indeed, Plaintiff estimates he received 100’s of calls even after the C&D Call to date (all within the last four years prior to filing the instant complaint).

38. Again, Defendant did not have prior express consent to place any automated or prerecorded calls to Plaintiff on Plaintiff’s cellular telephone at any time.

39. However, Defendant placed calls to the Plaintiff's cellular telephone without consent using an ATDS in violation of the TCPA.

40. Defendant's ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

41. The telephone number that Defendant used to contact Plaintiff was and is assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

42. Defendant's calls to Plaintiff's cellular telephone were not for "emergency purposes."

43. Pursuant to the TCPA and the FCC's January 2008 Declaratory Ruling, the burden is on Defendant to demonstrate that it had prior express consent to call Plaintiff's cellular phone with an ATDS.

44. The Plaintiff suffered actual harm and loss, since each of the unwanted calls depleted the Plaintiff's cell phone's battery, and the cost of electricity to recharge the phone is a tangible harm. While small, this cost is a real one, and the cumulative effect can be consequential, just as is true for exposure to X-rays resulting from the Defendant's unwanted phone calls to the Plaintiff's cell phone.

45. Plaintiff also suffered from an invasion of a legally protected interest by placing calls to the Plaintiff's personal phone line when the Defendant had no right to do so, resulting in an invasion of Plaintiff's right to privacy. The TCPA protects

consumers from this precise behavior.

46. Plaintiff has a common law right to privacy. *E.g.*, Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 1155, 193 (1890).

Congress sought to further protect that right by enacting the TCPA.

47. “[W]hen a person must endure the bother of unwanted calls in the privacy of her home, her harm is similar to other traditional injuries that courts have long recognized, such as invasion of privacy and nuisance.” *Toldi v. Hyundai Capital Am.*, No. 2:16-CV—01877-APG-GWF, 2017 WL 736882, at *2 (D. Nev. Feb. 23, 2017).

48. Plaintiff was also personally affected, since the Plaintiff felt that the Plaintiff’s privacy had been invaded when the Defendant placed calls to the Plaintiff’s phone line without any consent to do so.

49. The injury suffered by Plaintiff is concrete because Defendant’s violations caused Plaintiff to suffer an invasion of privacy.

COUNT I

Negligent Violations of the Telephone Consumer Protection Act, (47 U.S.C. § 227, *et seq.*)

50. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

51. Defendant negligently placed multiple automated calls to cellular

numbers belonging to Plaintiff without Plaintiff's prior express consent.

52. Each of the aforementioned calls by Defendant constitutes a negligent violation of the TCPA.

53. As a result of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

54. Additionally, Plaintiff is entitled to and seek injunctive relief prohibiting such conduct by Defendant in the future.

COUNT II

Knowing and/or Willful Violations of the Telephone Consumer Protection Act, (47 U.S.C. § 227, *et seq.*)

55. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

56. Defendant knowingly and/or willfully placed multiple automated calls to cellular numbers belonging to Plaintiff without Plaintiff's prior express consent.

57. Each of the aforementioned calls by Defendant constitutes a knowing and/or willful violation of the TCPA.

58. As a result of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages up to \$1,500.00 for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §

227(b)(3)(C).

59. Additionally, Plaintiff is entitled to seek injunctive relief prohibiting such conduct by Defendant in the future.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendant awarding the Plaintiff:

1. Injunctive relief prohibiting such violations of the TCPA by Defendant in the future;
2. Statutory damages of \$500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
3. Treble damages of up to \$1,500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C); and

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4. Such other relief as the Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: April 16, 2018

Respectfully submitted,

By /s/ David H. Krieger, Esq.

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Attorney for Plaintiff
DEWANN WILLIAMS

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DEWANN WILLIAMS,

Plaintiff,

v.

SANTANDER CONSUMER USA
INC.,

Defendant.

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: Civil Action No.: _____

**DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER
ENTITIES WITH A DIRECT FINANCIAL INTEREST IN LITIGATION**

Pursuant to Fed.R.Civ.P. 7.1 and Local Civil Rule 7.3, or Fed.R.Crim.P.
12.4 and Local Criminal Rule 12.3, DEWANN WILLIAMS who is Plaintiff,
makes the following disclosure:

1. The party is not a publicly held corporation or other publicly held
entity.

2. The party does not have a parent corporation.
3. There is no 10% or more of the stock of a party owned by a publicly held corporation or other publicly held entity.
4. There is no any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation.
5. The party is not a trade association.
6. The case does not arise out of a bankruptcy proceeding.

Dated: April 16, 2018

Respectfully submitted,

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